

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GIANT EAGLE, INC. and HBC SERVICE	)	
COMPANY,	)	
	)	
Plaintiffs and Counter-Defendants,	)	
	)	
v.	)	No. 2:19-cv-00904
	)	
	)	Judge Arthur J. Schwab
AMERICAN GUARANTEE AND LIABILITY	)	
INSURANCE COMPANY,	)	
	)	
Defendant; and	)	
	)	
XL SPECIALTY INSURANCE COMPANY,	)	
	)	
<u>Defendant and Counter-Claimant.</u>	)	
	)	
XL SPECIALTY INSURANCE COMPANY,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
OLD REPUBLIC INSURANCE COMPANY,	)	
	)	
Third-Party Defendant.	)	

**THIRD-PARTY DEFENDANT OLD REPUBLIC INSURANCE  
COMPANY’S ANSWER AND AFFIRMATIVE DEFENSES  
TO THE THIRD-PARTY COMPLAINT FILED BY THIRD-  
PARTY PLAINTIFF XL SPECIALTY INSURANCE COMPANY**

Third-Party Defendant Old Republic Insurance Company (“Old Republic”), for its Answer and Affirmative Defenses to the Third-Party Complaint (“Third-Party Complaint”) filed by Third-Party Plaintiff XL Specialty Insurance Company (“XL”), states as follows:

1. The allegations in Paragraph 1 of the Third-Party Complaint contain descriptive statements and characterizations regarding the Complaint in this action brought by Plaintiffs Giant

Eagle, Inc. and HBC Service Company (collectively, “Giant Eagle”), and do not require any response. Further, the allegations in Paragraph 1 of the Third-Party Complaint are not directed to Old Republic and thus do not require a response. To the extent any response is required, Old Republic states that the Complaint in this action brought by Giant Eagle (“Complaint”) speaks for itself.

2. Paragraph 2 of the Third-Party Complaint contains legal conclusions to which no response is required. Further, the allegations in Paragraph 2 of the Third-Party Complaint contain descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding the Complaint and the Third-Party Complaint, and do not require any response. To the extent any response is required, Old Republic states that the Third-Party Complaint speaks for itself.

3. Paragraph 3 of the Third-Party Complaint contains legal conclusions to which no response is required. Further, the allegations in Paragraph 3 of the Third-Party Complaint contain descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding the Complaint and the Third-Party Complaint, and do not require any response. To the extent any response is required, Old Republic states that the Third-Party Complaint speaks for itself, but XL is not entitled to any relief from Old Republic.

### **JURISDICTION**

4. The allegations in Paragraph 4 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 4 of the Third-Party Complaint are not directed to Old Republic and thus do not require a response. To the extent any response is required, Old Republic states that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 4 of the Third-Party Complaint, and on that basis denies same and requests proof thereof.

5. The allegations in Paragraph 5 of the Third-Party Complaint contain legal conclusions that do not require any response. To the extent any response is required, Old Republic states that it lacks sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 5 of the Third-Party Complaint, and on that basis denies same and requests proof thereof.

### **PARTIES**

6. The allegations in Paragraph 6 of the Third-Party Complaint are not directed to Old Republic and thus do not require a response. To the extent a response is required, Old Republic lacks sufficient information or knowledge to form a belief as to the truth of the allegations in Paragraph 6 of the Third-Party Complaint, and on that basis denies same and demands proof thereof.

7. Old Republic admits that it is incorporated in the Commonwealth of Pennsylvania but denies that its principal place of business is in Pennsylvania.

### **FACTUAL ALLEGATIONS**

8. The allegations in Paragraph 8 of the Third-Party Complaint contain descriptive statements and characterizations which appear to be based on the Complaint, and do not require any response. Further, the allegations in Paragraph 8 of the Third-Party Complaint are not directed to Old Republic and thus do not require a response. To the extent any response is required, Old Republic states that the Complaint speaks for itself.

9. The allegations in Paragraph 9 of the Third-Party Complaint contain descriptive statements and characterizations which appear to be based on the Complaint, and do not require any response. Further, the allegations in Paragraph 9 of the Third-Party Complaint are not directed to Old Republic and thus do not require a response. To the extent any response is required, Old Republic states that the Complaint speaks for itself.

10. The allegations in Paragraph 10 of the Third-Party Complaint contain legal conclusions that do not require any response. To the extent any response is required, Old Republic admits only that it issued certain “Commercial Excess Liability” and “Commercial General Liability (Occurrence)” insurance policies to Giant Eagle.

11. The allegations in Paragraph 11 of the Third-Party Complaint contain legal conclusions, descriptive statements and characterizations regarding the Third-Party Complaint, and do not require any response. To the extent any response is required, Old Republic states that the Third-Party Complaint speaks for itself but denies that the Old Republic policies are at issue.

12. The allegations in Paragraph 12 of the Third-Party Complaint contain legal conclusions, descriptive statements and characterizations regarding certain insurance policies issued by XL, and do not require any response. Further, the allegations in Paragraph 12 of the Third-Party Complaint are not directed to Old Republic and thus do not require a response. Further, Old Republic lacks any independent knowledge or basis to accept as true the allegations contained in Paragraph 12 of the Third-Party Complaint.

13. The allegations in Paragraph 13 of the Third-Party Complaint contain descriptive statements and characterizations regarding the Complaint, and do not require any response. Further, the allegations in Paragraph 13 of the Third-Party Complaint contain descriptive statements and characterizations regarding XL’s coverage position, its Answer and Counterclaim, and do not require any response. Further, the allegations in Paragraph 13 of the Third-Party Complaint are not directed to Old Republic and thus do not require a response. To the extent any response is required, Old Republic states that the Complaint speaks for itself, and XL’s coverage position, Answer and Counterclaim speak for themselves.

14. The allegations in Paragraph 14 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 14 of the Third-Party Complaint contain descriptive statements and characterizations regarding certain insurance policies issued by Old Republic, and do not require any response. To the extent any response is required, Old Republic states that the policies issued by Old Republic to Giant Eagle speak for themselves. Further, Old Republic denies any characterization of any policies issued by Old Republic that is inconsistent with the content of those policies.

15. The allegations in Paragraph 15 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 15 of the Third-Party Complaint contain descriptive statements and characterizations regarding certain insurance policies issued by Old Republic, and do not require any response. To the extent any response is required, Old Republic states that the policies issued by Old Republic to Giant Eagle speak for themselves. To the extent any further response is required, Old Republic denies the allegations in Paragraph 15 of the Third-Party Complaint. Further, Old Republic denies any characterization of any policies issued by Old Republic that is inconsistent with the content of those policies.

16. The allegations in Paragraph 16 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 16 of the Third-Party Complaint contain descriptive statements and characterizations regarding certain insurance policies issued by Old Republic, and do not require any response. To the extent any response is required, Old Republic states that the policies issued by Old Republic to Giant Eagle speak for themselves and admits generally the allegations in Paragraph 16. Further, Old Republic denies any characterization of any policies issued by Old Republic that is inconsistent with the content of those policies.

17. The allegations in Paragraph 17 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 17 of the Third-Party Complaint contain descriptive statements and characterizations regarding certain insurance policies issued by Old Republic, and do not require any response. To the extent any response is required, Old Republic states that the policies issued by Old Republic to Giant Eagle speak for themselves and admits generally the allegations in Paragraph 17. Further, Old Republic denies any characterization of any policies issued by Old Republic that is inconsistent with the content of those policies.

18. The allegations in Paragraph 18 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 18 of the Third-Party Complaint contain descriptive statements and characterizations regarding certain insurance policies issued by Old Republic, and do not require any response. To the extent any response is required, Old Republic states that the policies issued by Old Republic to Giant Eagle speak for themselves and admits generally the allegations in Paragraph 18. Further, Old Republic denies any characterization of any policies issued by Old Republic that is inconsistent with the content of those policies.

19. The allegations in Paragraph 19 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 19 of the Third-Party Complaint contain descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding certain insurance policies issued by Old Republic, and do not require any response. To the extent any response is required, Old Republic states that the policies issued by Old Republic to Giant Eagle speak for themselves. Further, Old Republic

denies any characterization of any policies issued by Old Republic that is inconsistent with the content of those policies.

20. The allegations in Paragraph 20 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 20 of the Third-Party Complaint contain descriptive statements and characterizations regarding certain insurance policies issued by Old Republic, and do not require any response. To the extent any response is required, Old Republic states that the policies issued by Old Republic to Giant Eagle speak for themselves. Further, Old Republic denies any characterization of any policies issued by Old Republic that is inconsistent with the content of those policies.

21. The allegations in Paragraph 21 of the Third-Party Complaint contain descriptive statements and characterizations regarding the Complaint, and do not require any response. Further, the allegations in Paragraph 21 of the Third-Party Complaint are not directed to Old Republic and thus do not require a response. To the extent any response is required, Old Republic states that the Complaint speaks for itself.

22. The allegations in Paragraph 22 of the Third-Party Complaint contain descriptive statements and characterizations regarding XL's Answer and Counterclaim, and do not require any response. To the extent any response is required, Old Republic states that XL's Answer and Counterclaim speak for themselves.

23. The allegations in Paragraph 23 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 23 of the Third-Party Complaint contain descriptive statements and characterizations regarding XL's coverage position, Answer and/or Counterclaim, and do not require any response. To the extent any response is required, Old Republic states that XL's coverage position speaks for itself.

24. The allegations in Paragraph 24 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 24 of the Third-Party Complaint contain descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding XL's coverage position, Answer and/or Counterclaim, and do not require any response. To the extent any response is required, Old Republic denies each and every allegation contained therein.

25. The allegations in Paragraph 25 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 25 of the Third-Party Complaint contain or reference descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding XL's coverage position, Answer and/or Counterclaim, and do not require any response. To the extent any response is required, Old Republic denies each and every allegation contained therein.

26. The allegations in Paragraph 26 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 26 of the Third-Party Complaint contain descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding the Complaint and XL's coverage position and Third-Party Complaint, and do not require any response. To the extent any response is required, Old Republic denies each and every allegation contained therein.

#### **COUNT I – DECLARATORY JUDGMENT**

27. Old Republic re-asserts and incorporates by reference its responses to Paragraphs 1 through 26 above.

28. The allegations in Paragraph 28 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 28 of the Third-Party Complaint contain descriptive statements, characterizations and potential hypothetical



outcomes, determinations and rulings regarding the Complaint and XL's coverage position and Third-Party Complaint, and do not require any response. To the extent any response is required, Old Republic denies each and every allegation contained therein.

29. The allegations in Paragraph 29 of the Third-Party Complaint contain legal conclusions that do not require any response. To the extent any response is required, Old Republic denies each and every allegation contained therein.

### **COUNT II - EQUITABLE CONTRIBUTION**

30. Old Republic re-asserts and incorporates by reference its responses to Paragraphs 1 through 26 above.

31. The allegations in Paragraph 31 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 31 of the Third-Party Complaint contain descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding the Complaint and XL's coverage position and Third-Party Complaint, and do not require any response. To the extent any response is required, Old Republic denies each and every allegation contained therein.

32. The allegations in Paragraph 32 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 32 of the Third-Party Complaint contain or reference descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding the Complaint and XL's coverage position and Third-Party Complaint, and do not require any response. To the extent any response is required, Old Republic denies each and every allegation contained therein.

### **COUNT III - CONTRACTUAL OR EQUITABLE SUBROGATION**

33. Old Republic re-asserts and incorporates by reference its responses to Paragraphs 1 through 26 above.

34. The allegations in Paragraph 34 of the Third-Party Complaint contain descriptive statements and characterizations regarding certain insurance policies issued by XL, and do not require any response. Further, the allegations in Paragraph 34 of the Third-Party Complaint are not directed to Old Republic and thus do not require a response. Further, Old Republic lacks any independent knowledge or basis to accept as true the allegations contained in Paragraph 34 of the Third-Party Complaint.

35. The allegations in Paragraph 35 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 35 of the Third-Party Complaint contain descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding the Complaint brought in this action by Giant Eagle and XL's coverage position and Third-Party Complaint, and do not require any response. To the extent any response is required, Old Republic denies each and every allegation contained therein.

36. The allegations in Paragraph 36 of the Third-Party Complaint contain legal conclusions that do not require any response. Further, the allegations in Paragraph 36 of the Third-Party Complaint contain or reference descriptive statements, characterizations and potential hypothetical outcomes, determinations and rulings regarding the Complaint and XL's coverage position and Third-Party Complaint, and do not require any response. To the extent any response is required, Old Republic denies each and every allegation contained therein.

37. Paragraph 37 of the Third-Party Complaint contains legal conclusions to which no response is required. Further, the allegations in Paragraph 37 of the Third-Party Complaint contain descriptive statements, characterizations and potential hypothetical outcomes, determinations and

rulings regarding XL's coverage position and Third-Party Complaint, and do not require any response.

### **AFFIRMATIVE DEFENSES**

Old Republic asserts the following Affirmative Defenses without assuming the burden of proof for such where the burden of the defense is not imposed by law upon Old Republic.

#### **FIRST AFFIRMATIVE DEFENSE**

The Third-Party Complaint fails to allege facts sufficient to state a claim upon which relief can be granted against Old Republic.

#### **SECOND AFFIRMATIVE DEFENSE**

To the extent the insured(s) under any Old Republic Policies named in this Third-Party Complaint has failed to comply with the terms, conditions or obligations of the Policies, the claims asserted in the Third-Party Complaint are barred.

#### **THIRD AFFIRMATIVE DEFENSE**

To the extent the insured(s) has failed to provide Old Republic with timely and proper notice of the alleged accidents or occurrences giving rise to the underlying claims, and/or has failed to give Old Republic timely and proper notice of the claims instituted against it, the claims asserted in the Third-Party Complaint are barred.

#### **FOURTH AFFIRMATIVE DEFENSE**

To the extent any Old Republic Policy at issue in this action requires, as a condition precedent to coverage, that the insured provide Old Republic an opportunity to associate, at Old Republic's discretion, in the defense of underlying claims or proceedings and to the extent the insured has failed to provide Old Republic with such an opportunity, Old Republic is relieved of any obligation or duty with respect to such claims.

**FIFTH AFFIRMATIVE DEFENSE**

To the extent the relief sought in the underlying claims is equitable in nature and does not constitute damages, it is not recoverable under any Old Republic Policy at issue in this action.

**SIXTH AFFIRMATIVE DEFENSE**

To the extent the relief sought in the underlying claims does not arise out of covered bodily injury, personal injury or property damage, it is not recoverable under any Old Republic Policy at issue in this action.

**SEVENTH AFFIRMATIVE DEFENSE**

To the extent any bodily injury, personal injury or property damage alleged in the underlying claims was expected or intended or arose out of intentional conduct on the part of the insured, in whole or in part, Old Republic has no obligation to provide coverage for such claims.

**EIGHTH AFFIRMATIVE DEFENSE**

To the extent the underlying claims did not result from accidents or occurrences, in whole or in part, any Old Republic Policy at issue in this action does not provide coverage for the underlying claims.

**NINTH AFFIRMATIVE DEFENSE**

To the extent any bodily injury, personal injury or property damage alleged in the Complaint and Third-Party Complaint took place during periods other than the period of coverage provided by any Old Republic Policy at issue in this action, such bodily injury, personal injury or property damage is not covered as a matter of law.

**TENTH AFFIRMATIVE DEFENSE**

Old Republic has no obligation to defend the insured, and no obligation to indemnify for defense costs incurred for covered claims when other insurance is obligated to pay defense costs for the claims.

**ELEVENTH AFFIRMATIVE DEFENSE**

To the extent that the insured or any other party may have voluntarily paid or assumed an obligation to pay or incurred any expense in connection with the underlying claims without Old Republic's consent or approval, there is no coverage under any Old Republic Policy at issue in this action for such payments or assumed obligations.

**TWELFTH AFFIRMATIVE DEFENSE**

To the extent that the insured or any other party may have failed to mitigate, minimize, or avoid any damages they allegedly sustained, any recovery against Old Republic must be reduced accordingly.

**THIRTEENTH AFFIRMATIVE DEFENSE**

To the extent that it is determined that the insured(s), its agents or representatives misrepresented or failed to disclose or omitted material information in connection with any application for insurance in connection with the issuance or renewal of any Old Republic Policy at issue in this action, the claims for coverage are barred and that Policy is void ab initio.

**FOURTEENTH AFFIRMATIVE DEFENSE**

For any Old Republic Policy at issue in this action, that Policy does not apply in any fashion until all self-insured retentions have been properly exhausted.

**FIFTEENTH AFFIRMATIVE DEFENSE**

There is no obligation under any Old Republic Policy at issue in this action because the liability of third-party plaintiff and/or the insured(s) has not been determined finally by settlement, award or verdict.

**SIXTEENTH AFFIRMATIVE DEFENSE**

To the extent that the relief sought in the underlying claims constitutes punitive damages or enhanced compensatory damages, no coverage is afforded for such relief by any Old Republic Policy at issue in this action.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

For any Old Republic Policy at issue in this action, that Policy provides no coverage to any person or entity that is not included as a named insured or that does not otherwise qualify as an insured under the Old Republic Policy.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

To the extent that the relief sought in the underlying claims constitutes fines, penalties or restitution, no coverage is afforded for such relief by any Old Republic Policy at issue in this action.

**NINETEENTH AFFIRMATIVE DEFENSE**

In the event that Old Republic is held liable for any costs or expenses for the claims described in the Complaint or Third-Party Complaint, Old Republic is entitled to and affirmatively seeks contribution, subrogation, equitable indemnity, contractual indemnity, reimbursement, allocation, enforcement of its “other insurance” policy provision, and other relief against Plaintiffs Giant Eagle, Inc. and HBC Service Company, all other insurers of Plaintiffs, and XL itself.

**TWENTIETH AFFIRMATIVE DEFENSE**

To the extent that the insured(s) knew or should have known of the underlying losses or risks at the time that any Old Republic Policy at issue in this action was issued, any claims for coverage are barred.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The third-party plaintiff's and/or insured's claims for coverage are barred, in whole or in part, to the extent that the losses for which recovery is sought were in progress at the inception of any Old Republic Policy.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

To the extent that the insured's acts or failures to act which gave rise to the underlying claims were in violation of the law or public policy, the claims for coverage are barred.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

To the extent that any Old Republic Policy at issue in this action excludes coverage for liability assumed by the insured under any contract or agreement, any of the underlying claims which arise from liability assumed pursuant to any such contract or agreement are barred.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

To the extent the third-party plaintiff and/or the insured(s) has failed to establish the terms, conditions or other provisions of any Old Republic Policy at issue in this action, Old Republic is under no obligation to provide the coverage sought by the insured or any other party.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The claims for coverage are barred, in whole or in part, to the extent that the third-party plaintiff and/or the insured(s) has failed to join other parties who are necessary for the adjudication of this action.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

To the extent that the Old Republic Policy is deemed to provide coverage for the underlying claims, which is denied, the extent of such coverage must be limited by applicable principles of allocation.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

To the extent that the insured or any other party asserts that any Old Republic Policy at issue in this action provides coverage for the underlying claims, there has been a lack of consideration for the obligations claimed and circumstances sued upon; therefore, Old Republic has no obligation with respect to such claims under the terms of any Old Republic Policy at issue in this action.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

The imposition of liability upon Old Republic outside the scope of any alleged coverage afforded by any Old Republic Policy at issue in this action would result in unjust enrichment.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

To the extent that any Old Republic Policy at issue in this action exclude or reduce coverage based on the existence of other valid insurance, the amount of coverage, if any, provided in the Old Republic Policy is reduced in whole or in part.

**THIRTIETH AFFIRMATIVE DEFENSE**

The third-party plaintiff's and/or the insured's claims may be barred in whole or in part to the extent that the insured or any other party failed to take all responsible steps to prevent other bodily injury or property damage arising out of the same or similar conditions.



**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Old Republic's duty, if any, to indemnify or reimburse the insured for any of its claims or liabilities is subject to any and all other policy terms, definitions, conditions, exclusions, endorsements and Program Agreements.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

The third-party plaintiff's and/or insured's claims may be barred, in whole or in part, to the extent that the third-party plaintiff and/or insured seeks coverage under any Old Republic Policy in place of other insurance which is or becomes invalid, uncollectible or otherwise unavailable due to the insolvency of underlying or other insurers.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

To the extent that the third-party plaintiff and/or insured seeks a declaration or actual indemnification for losses which have not yet arisen and for amounts not yet paid, this Court may not grant advisory opinions, declarations or other such relief against Old Republic.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

Third-party plaintiff's and/or the insured's claims may be barred, in whole or in part, by the doctrine of *forum non conveniens*.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

To the extent that Old Republic incurs any costs or expenses including but not limited to Supplementary Payments (which include but are not limited to allocated loss adjustment expenses (ALAE) and deductibles paid to effect settlement of any claim or suit, Old Republic is entitled to contractual indemnification and/or reimbursement from the insured relating to each of the Old Republic policies issued to the insured and all related claims.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

Old Republic reserves the right to assert further defenses, including but not limited to those which may be appropriate upon discovery of additional facts and/or the addition of other parties with respect to the claims set forth in the Complaint or Third-Party Complaint.

**PRAYER FOR RELIEF**

WHEREFORE, having fully answered the allegations contained in the Third-Party Complaint and having stated its defenses, Third-Party Defendant Old Republic Insurance Company respectfully prays that judgment be entered against Third-Party Plaintiff XL as follows:

1. Dismissing with prejudice XL's Third-Party Complaint in its entirety against Old Republic;
2. Declaring that Old Republic has no duties or obligations to defend, reimburse and/or indemnify Plaintiffs and/or XL for any fees, expenses, or costs alleged by XL to have been incurred, and that Old Republic has no other duties, obligations or liability to XL in connection with any of the underlying actions or claims referred to in the Third-Party Complaint;
3. Affirming Old Republic's Affirmative Defenses;
4. Awarding Old Republic any recoverable costs of this action, including expenses and reasonable attorneys' fees, as permitted by law; and
5. Awarding Old Republic all such other relief as the Court deems just and proper.

Dated: December 6, 2019

Respectfully submitted,

By: /s/ Phillip R. Earnest

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**Counsel for Old Republic Insurance Co.**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 6, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Phillip R. Earnest